United Nations Convention on the Law of the Sea SPLOS/53

Meeting of States Parties

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Report of the External Auditors for the financial year 1999, with financial statements of the International Tribunal for the Law of the Sea as of 31 December 1999

Introductory note

1. The Ninth Meeting of States Parties, as recorded in the report of the Ninth Meeting (SPLOS/48, para. 28), requested the Registrar, pending the entry into force of the Financial Regulations of the Tribunal, to present to the Meeting of States Parties every year a preliminary performance report on the use of the budget appropriations for the preceding year and a final performance report on the use of the budget appropriations for the year prior to the preceding year.

2. Consistent with that decision, the report of the External Auditor for 1998, the year prior to the preceding financial year, is presented in document SPLOS/51.

3. The preliminary performance report of the preceding year (1999) is annexed to the draft budget proposals of the Tribunal for 2001 in SPLOS/WP.12, annex.

4. In order that the Meeting of States Parties may be apprised, at the earliest opportunity of the report of the External Auditors for the financial year 1999 containing the financial statements of the International Tribunal for the Law of the Sea as of 31 December 1999, the Tribunal decided that the report should be presented to the Meeting of States Parties as soon as it is available. The report has been transmitted to the President and Members of the Tribunal, but owing to the scheduling of the next session, it will only be taken up for consideration and review by the Tribunal at its tenth session, commencing on 18 September 2000.

5. It may be noted that the report also deals with the matters specifically requested by the Ninth Meeting of States Parties, as communicated to the Auditors by the President of the Tribunal.

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The International Tribunal for the Law of the Sea

Hamburg

Report on the examination of the financial statements as of 31 December 1999

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To the States Parties to the United Nations Convention on the Law of the Sea:

A. SCOPE OF THE EXAMINATION

We have audited the accompanying statement of assets, liabilities and equity of

THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

HAMBURG

as of December 31, 1999, the statement of income and expenditures for the period then ended and the Notes to the Financial Statements. Within the audit scope we have additionally audited certain aspects of operating procedures as directed by the President of the International Tribunal for the Law of the Sea as set out in his letter of January 7, 2000. The financial statements are the responsibility of the Registry of the International Tribunal for the Law of the Sea. Our responsibility is to express an opinion on these financial statements and the following aspects of the operational procedures of the International Tribunal for the Law of the Sea:

(a) whether expenditures incurred have been appropriately authorized by the party designated for that purpose in the Rules of the Tribunal and the Financial Regulations of the United Nations;
(b) whether staff and persons being paid by the Tribunal have been recruited or engaged in the manner provided for in the Rules of the Tribunal or the Financial Regulations of the United Nations;
(c) whether goods and services have been procured in accordance with the procedures provided for in the Financial Regulations of the United Nations; and
(d) whether goods and services which have been procured are necessary or not excessive, having regard to circumstances and the functions of the Tribunal.

The financial statements as of December 31, 1999, and our audit thereon cover a period from January 1,1999, to December 31,1999.

The International Tribunal for the Law of the Sea applied generally accepted accounting principles and the Financial Regulations and Rules of the United Nations which are applied *mutatis mutandis*.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

Regarding audit procedures and the results of the additional audit scope we refer to Exhibit 6.

Team members from our London and Hamburg offices conducted the audit.

Reference is made to the General Terms for "Wirtschaftsprüfer und Wirtschaftsprüfungsgesellschaften" dated January 1, 1999 and our Special Conditions (Exhibit 7), in regard to the assignment and our responsibilities, including those to third parties.

B. BUDGET

The Meeting of States Parties, at its Eighth Meeting, by its decision of May 21, 1998, approved and appropriated the amount of US$ 6,983,817 for the International Tribunal for the Law of the Sea for the period from January 1, 1999, to December 31, 1999, as set out in document SPLOS/ L.9. In addition, the Meeting of States Parties approved the establishment of a Working Capital Fund. On an exceptional basis, savings from appropriations in the budget, up to a maximum of USD 200,000, will be credited to the Working Capital Fund.

The statement of income and expenditure (before provision for the Working Capital Fund) shows an excess of income over expenditure of US$ 470,915.23. Thereof US$ 200,000 is credited to the Working Capital Fund.

A shorter meeting time for judges than planned resulted in savings in the budget lines: Remuneration of Judges, Travel of Judges to sessions and Communications. Other factors such as recruitment delays, non completion and non-utilization of the entire temporary premises of the International Tribunal for the Law of the Sea in Hamburg resulted in the savings in the budget lines: Established Posts, Common Staff Costs, Supplies and Materials as well as Maintenance of Premises and Rental and Maintenance of Equipment.

Reference is also made to the Notes to the Financial Statements.

C. OPINION

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of The International Tribunal for the Law of the Sea, Hamburg, as of December 31, 1999, and the excess of income over expenditure for the period then ended in conformity with generally accepted accounting principles and with the Financial Regulations of the United Nations which were applied *mutatis mutandis*. The operational procedures of the International Tribunal for the Law of the Sea as detailed in Exhibit 6 were in accordance with the Rules and the Staff Rules of the International Tribunal for the Law of the Sea and the Financial Regulations and Staff Rules of the United Nations applied *mutatis mutandis*.

Arthur Andersen
Wirtschaftsprüfungsgeselischaft
Steuerberatungsgesellschaft mbH

(stamp)

(signed)
Jöns

(signed)
Reese

Wirtschaftsprüfer Wirtschaftsprüferin

Hamburg, April 18,2000

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Our prior written approval is required for publication or distribution of the financial statements in a version different from the one reported upon by us if reference is made in such publication or distribution to our opinion or to our examination.

EXHIBIT 1

STATEMENT 1

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
STATEMENT OF INCOME AND EXPENDITURES
FOR THE PERIOD FROM 1 TANUARY UNTIL 31 DECEMBER 1999

	1999 US$	1998 US$
Income		
Income		
Assessed contributions	6,983,817.00	6,124,033.00
Donation Korea Foundation	100,000.00	0.00
Miscellaneous income		
Interest income	22,526.30	10,172.34
Release of prior periods obligations	65,578.77	7,017.29
Currency exchange gains	0.00	13,876.04
Total income	7,171,922.07	6,155,098.67
Expenditures		
Budget lines - expenditures and obligations (Annex 1)	6,563,505.00	5,316,769.74
Korea Foundation Library - expenditures and obligations	99,714.08	0.00
Currency exchange losses	37,787.76	0.00
Total expenditures	6,701,006.84	5,316,769.74
Excess of income over expenditures	470,915.23	838,328.93
Provision for Working Capital Fund	200,000.00	0.00
Excess of income over expenditures after provision for the Working Capital Fund	270,915.23	838,328.93

EXHIBIT 2

STATEMENT 2

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
STATEMENT OF ASSETS, LIABILITIES, WORKING CAPITAL FUND
AND EXCESS OF INCOME OVER EXPENDITURES
AS AT 31 DECEMBER 1999

	1999 US$	1998 US$
Assets		
Cash and term deposits	2,536,997.24	1,026,905.95
Accounts receivable		
Contributions receivable from States Parties	1,466,309.00	1,374,073.90
Tax Reimbursements due	62,811.20	34,474.90
Other accounts receivable	6,642.17	5,628.26
TOTAL ASSETS	4,072,759.61	2,441,083.01
Liabilities		
Contributions received in advance	1,260,413.00	375,242.00
Unliquidated obligations- current period	438,696.83	639,694.48
Unliquidated obligations- prior period	31,031.59	2,035.00
Unliquidated obligations- Korea Foundation Library	86,896.84	0.00
United Nations Joint Staff Pension Fund (UNJSPF)	13,572.73	19,638.75
Assessment special account	932,904.46	566,143.85
TOTAL LIABILITIES	2,763,515.45	1,602,754.08
Working Capital Fund	200,000.00	0.00
Excess of income over expenditures for the financial period 1998	838,328.93	0.00
Excess of income over expenditures for the financial period 1999 (after provision for the Working Capital Fund)	270,915.23	838,328.93
TOTAL EQUITY	1,109,244.16	838,328.93
TOTAL LIABILITIES, WORKING CAPITAL FUND AND EXCESS OF INCOME OVER EXPENDITURES	4,072,759.61	2,441,083.01

NOTES TO THE FINANCIAL STATEMENTS FOR THE PERIOD 1 JANUARY UNTIL 31 DECEMBER 1999

Note 1: Statement of the objectives and activities of the Tribunal

1. The International Tribunal for the Law of the Sea (ITLOS) is an independent international judicial body established by the United Nations Convention on the Law of the Sea for the settlement of disputes relating to the uses and resources of the seas. Such disputes may be between the States Parties to the Convention, international organisations and consortia of corporations or individual persons or corporations. The primary objective of the Tribunal is to provide an established global court which is available for disputes that states may submit to it or that the other entities referred to above may submit as appropriate.

Note 2: Summary of significant accounting policies

2. The Tribunal's accounts are maintained in accordance with the Financial Regulations of the United Nations, with such modifications as required by the nature of the work of the Tribunal. The Meeting of States Parties to the United Nations Convention on the Law of the Sea decided that the Tribunal would use the Financial Regulations of the United Nations with such modifications as may be needed. The ITLOS Financial Regulations are under review by the Meeting of States Parties scheduled for May 2000. The United Nations Financial Regulations and Rules will be in effect until then.

3. The form of presentation of the accounts, comprising two statements and one Annex for the financial period ended 31 December 1999, are in line with the formats proposed for use by the agencies of the United Nations system.

Accounting period

4. The current accounting period being reported on is from 1 January to 31 December 1999.

Currency of accounts

5. The accounting unit is the United States dollar. The United Nations operational rates of exchange form the basis for establishing the equivalent in United States dollars of other currencies.

Translation of currencies

6. Differences between the valuation of the currencies when entered into the accounts and when actual transactions are completed are calculated and detailed in these notes as gains or losses on exchange transactions.

7. Periodically, assets and liabilities in currencies other than United States dollars are revalued for accounting purposes at the prevailing United Nations operational rates of exchange. Any variance due to fluctuation of those rates is accounted for as income or loss in the statement of income and expenditure.

Income

8. Income consists of assessed contributions from the States Parties. In addition, the Tribunal received a donation from the Korea Foundation for supplementing the establishment of its Library. All other income received by the Tribunal is classified as miscellaneous income and is credited as general resources.

Expenditure

9. All expenditure of the Tribunal is recorded against allocated lines of budgetary appropriation.

10. Expenditure of ITLOS is accounted for on an accrual basis, except for that relating to staff entitlements, which is accounted for on the basis of cash disbursements. No provision is made for staff entitlements for repatriation, accumulated annual leave and compensatory time. Reference is made to Note 3: Contingent liability.

11. Expenditures and Obligations pertaining to the donation made by the Korea Foundation are listed as a separate expenditure line item.

Assets

12. All funds received are deposited into the Tribunal's bank accounts, including those under special account arrangements, and reflected as cash holdings. A separate bank account for the donation of the Korea Foundation is maintained and its year end balance is included as an asset. Non-expendable equipment (especially computer hardware and software) is not included in the assets but is charged against the current appropriations when acquired.

Liabilities

13. The liabilities of the Tribunal include contributions received in advance, special accounts and unliquidated obligations.

14. The statement of assets and liabilities include a special account (United Nations Joint Staff Pension Fund - UNJSPF) maintained for withholdings from staff and contributions of the Tribunal for payment into the United Nations Joint Staff Pension Fund (UNJSPF). These withholdings are for staff and the Organization's share for the period prior to the General Service Staffs' eligibility to participate in the UNJSPF.

15. A special account (Assessment special account) has also been maintained for Staff Assessment withholdings from the gross remuneration of staff in accordance with the applicable scale of the United Nations.

Reserves

16. Reserves include savings transferred to the Working Capital Fund as authorised by the Eighth Meeting of the States Parties (SPLOS/31, para 23).

Note 3: Contingent liability

17. The net contingent liability for staff benefits as at 31 December 1999 is estimated at US$ 192,017 consisting of the following:

Accumulated leave	$ 117,144.66
Compensatory time	8,349.08
Repatriation grant	66,522.71
	192,016.45

18. There is no provision in the accounts for contingent liability. The expenditures will be charged against the budget appropriations of the periods when actual payments are made. In accordance with ST/IC/1992/18 the contingent liability reflected above is based on net remuneration and does not include Staff Assessment. This liability might be subject to German Social Security payments (Medical insurance and old age care) for German staff.

Note 4: Income

19. The Tribunal's income in the financial period 1999 totalled US$ 7,171,922.07. Income resulted from contributions of 132 States Parties at the end of 1999 of US$ 6,983,817.00. In addition, income included the donation of the Korea Foundation in the amount of US$ 100,000.00, savings on cancellation of prior period obligations of US$ 65.578.77 and net interest income of US$ 22,526.30. Of the total income listed above, at the end of that financial period an amount of US$ 1,466,309.00 was outstanding from States Parties.

Note 5: Expenditures

20. The Tribunal's expenditures for the financial period 1999 totalled US$ 6,701,006.84. These include expenditures and obligations resulting from budget lines of US$ 6,563,505.00. Expenditures and obligations for the Korea Foundation Library Fund amounting to US$ 99,714.08 are shown as a separate expenditure line item. Losses due to fluctuations in exchange rates amount to US$ 37,787.76.

Note 6: Assets

21. Contributions receivable for the current financial period total US$ 1,466,309.00 as at 31 December 1999.

22. As at 31 December 1999, cash totalled US$ 2,536,997.24. Included in this amount is a special account for Pension withholdings and employer's contribution of US$ 10,120.09 and a special account for Staff assessment withholdings of US$ 624,698.54. These are not expendable resources of the Tribunal. In addition, cash include a separate bank account for the donation of the Korea Foundation in the amount of US$ 86,896.84.

23. The aggregate of accounts receivable, advances and deposits as at 31 December 1999 totalled US$ 4,072,759.61.

Note 7: German Social Security Payments

24. German Nationals and German residents among the staff are mandatorily required to contribute to the National Social Security System, which has four components. These are Pension, Medical Insurance, Unemployment Insurance and Old Age Care. In addition, the staff members have to contribute to the United Nations Joint Staff Pension Fund to which the Tribunal is a participant. Due the fact that the host country agreement (Headquarters Agreement) is still not finalised, the Tribunal reimburses the employer's share (fifty percent) of the contributions made to the German social security system by the staff, which is in addition to the staff share of the contribution. No reimbursement was made for unemployment insurance, it is however, envisaged that from this amount the pension contribution shall be reimbursed to the staff members by the German authorities, once the agreement is finalised. The staff will be thus obliged to reimburse the Tribunal for the same. Since there is no legal basis yet to capitalise these accounts receivables, it should be noted that total payments in the amount of US$ 73,287 were made during the financial period 1 January to 31 December 1999 out of which an estimated amount of US$ 42,535 is for the pension contributions and is likely to be recovered. In addition a sum of US$ 83,192 is likely to be recovered for the financial period 1996/97 and 1998.

Note 8:

25. The audited Financial Statements of 1998 showed a net gain of income over-expenditure in the amount of US$ 838,828.93. Under the United Nations Financial Regulations which the Tribunal applies *mutatis mutandis*, this amount should be surrendered by adjusting the States Parties Assessment of Contributions for the following Financial period. In view of the outstanding contributions and the current cash flow situation of the Tribunal and the need to build up the working capital fund to an operational level, it is intended that the surrender will be delayed until 2001.

FINANCIAL REPORT FOR THE FINANCIAL PERIOD 1 JANUARY UNTIL 31 DECEMBER 1999

Introduction

1. The Registrar of the International Tribunal for the Law of the Sea submits herewith the financial report for the Financial Period ended 31 December 1999. It should also be noted that this is the third financial period and the third financial report of the International Tribunal for the Law of the Sea (ITLOS).

2. The financial report includes 2 financial statements, the Notes to the financial statements and Annex 1 for the financial period ended 31 December 1999. Of these, Statements 1 and 2 are presented in line with the formats agreed for the harmonization of the accounts of agencies and organizations in the United Nations common system, and to facilitate review by States Parties to the United Nations Convention on the Law of the Sea. The financial report provides the financial results of ITLOS' activities in 1999. Highlights are summarized in the following paragraphs.

Income

3. ITLOS income in the financial period 1999 totalled assessed contributions of US$ 6,983,817. Income resulted from contributions of 132 States Parties at the end of 1999. Of the total income listed above an amount of US$ 1,466,309 was outstanding from the States Parties. In addition to the above there was other income from the donation of the Korea Foundation in the amount of US$ 100,000, savings on cancellation of prior periods obligations in the amount of US$ 65,578.77 and net interest income in the amount of $ 22,526.30.

Expenditure

4. ITLOS expenditure for the financial period 1999 was US$ 6,701,006.84. These include expenditures and obligations for the Korea Foundation Library and losses due to fluctuations in the exchange rates. There were certain savings due to recruitment delay factors and consolidating meeting with judicial deliberations.

Special accounts

5. A special account was maintained for the Pension Fund withholdings of the staff members and of the Organization's share of pension contributions for the period prior to the General Services staff's eligibility to participate in the United Nations Joint Pension Fund. In addition, a special account was maintained for staff assessment withholdings.

Working capital fund

6. The Eighth Meeting of States Parties by its decision on 21 May 1998 approved the establishment of a Working Capital Fund for the ITLOS as set out in the document SPLOS/ L.9. On an exceptional basis, savings from appropriations in the budget, up to a maximum of US$ 200,000 will be credited to the fund. In accordance with this decision a sum of US$ 200,000 is provided for the Working Capital Fund.

Institutional arrangements

7. Since this is only the Tribunal's third financial period, it is still at the development stage and more comprehensive systems of checks and balances are being instituted. In view of the recognized need for a computerized accounting system the implementation of the Sun computerised Accounting System is at an advance stage of completion. Limited staff resources during peak periods extended the time frame of such a conversion.

(signed)
Gritakumar E. Chitty
Registrar

EXHIBIT 5
ANNEX 1

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
BUDGETARY APPROPRIATIONS COMPARED WITH EXPENDITURES AND OBLIGATIONS FOR THE PERIOD ENDED 31 DECEMBER 1999

	Objects of expenditure	1999 Appropriations	1999 Expenditures & Obligations	Savings/ (Overrun)
A.	**RECURRENT EXPENDITURE**			
	Remuneration of judges	$2,377,257.00	$2,218,737.00	$158,520.00
	Established posts	2,197,700.00	2,130,094.00	67,606.00
	Common staff costs	734,030.00	646,498.00	87,532.00
	Temporary assistance for meetings	307,000.00	301,258.00	5,742.00
	Travel of Judges to sessions	240,000.00	228,090.00	11,910.00
	Communications	151,000.00	122,838.00	28,162.00
	Rental and maintenance of equipment	141,400.00	138,101.00	3,299.00
	Maintenance of premises	125,000.00	120,175.00	4,825.00
	General temporary assistance	120,000.00	116,469.00	3,531.00
	Official travel	82,000.00	81,393.00	607.00
	Supplies and materials	70,000.00	35,830.00	34,170.00
	Library - procurement of books and publications	60,000.00	59,902.00	98.00
	Start -up costs of library	60,000.00	59,591.00	409.00
	Miscellaneous services	50,000.00	38,474.00	11,526.00
	External printing and binding	46,000.00	44,464.00	1,536.00
	Overtime	45,330.00	45,330.00	0.00
	Special services	13,000.00	13,000.00	0.00
	Representation allowance	7,600.00	7,600.00	0.00
	Hospitality	6,500.00	6,042.00	458.00
B.	**NON-RECURRENT EXPENDITURE**			
	Purchase of equipment	125,000.00	124,758.00	242.00
	Purchase of special equipment	25,000.00	24,861.00	139.00
	TOTAL	$6,983,817.00	$6,563,505.00	$420,312.00

EXHIBIT 6

AUDIT PROCEDURES AND RESULTS OF THE ADDITIONAL AUDIT SCOPE

As directed by the President of the International Tribunal for the Law of the Sea and set out in his letter dated 7 January 2000, we have audited the following aspects of operational procedures in addition to our audit of the financial statements as of 31 December 1999:

(a) whether expenditures incurred have been appropriately authorized by the party designated for that purpose in the Rules of the Tribunal and the Financial Regulations of the United Nations; (b) whether staff and persons being paid by the Tribunal have been recruited or engaged in the manner provided for in the Rules of the Tribunal or the Financial Regulations of the United Nations; (c) whether goods and services have been procured in accordance with the procedures provided for in the Financial Regulations of the United Nations; and (d) whether goods and services which have been procured are necessary or not excessive, having regard to circumstances and the functions of the Tribunal.

In carrying out the audit of the above we performed the following audit work:

(a) Authorization of expenditures

We reviewed if the procedures for the authorization of expenditures are in line with the Financial Regulations of the United Nations. We examined on a sample basis if the procedures identified have been applied appropriately.

In our opinion the procedures for the authorization of expenditures were carried out in accordance with the Financial Regulations of the United Nations.

(b) Procedures for recruiting/ engaging staff

We reviewed if the procedures for recruiting/ engaging staff are in line with the Staff Rules of the International Tribunal for the Law of the Sea and the Financial Regulations of the United Nations for the following categories:

- Professional staff
- General service staff
- Special Service Agreements.

We selected samples of various categories and examined if proper procedures have been applied.

In our opinion the procedures for recruiting/ engaging staff were carried out in accordance with the Rules of the International Tribunal for the Law of the Sea and the Financial Regulations and Staff Rules of the United Nations.

(c) Procedures for procurement of goods and services

We reviewed if the procedures are in line with the Financial Regulations of the United Nations (i.e. request for bids or proposals, fair analysis of proposals, written contracts, etc.). We examined samples of bids for procurement and reviewed procedures to ensure compliance with the Financial Regulations of the United Nations.

In our opinion the procedures for procurement of goods and services were carried out in accordance with the Financial Regulations of the United Nations.

(d) Examined whether goods and services procured are necessary or excessive

We examined whether expenditures exceeded the budgetary appropriations or not. We reviewed if goods/equipment procured are listed in the inventory and are being used by the Tribunal. We also examined if the equipment acquired is excessive with regard to the circumstances and functions of the Tribunal.

We note the following observations:

1) The expenditures do not exceed the budgetary appropriations.
2) The equipment acquired is duly listed in the inventory and is being used as required by the circumstances and the functions of the Tribunal. We make a note to the following:

• Three servers acquired in December 1999 are currently not being used. We understand that there was a delay in installing the servers as the time table for the move to the new premises has been delayed. We understand that one of the servers will be used shortly for implementing the Horizon Library System and another server will be used for the Sun Accounting System. The third server will be used for a network.

• Six laptop computers are not assigned to any judge/ staff member. We understand that these laptops are in an "equipment pool" and are assigned to judges and/or temporary staff such as translators, verbatim reporters, interns, etc. during cases and sessions of the Tribunal.

Exhibit 7

General Conditions of Assignment for Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften

1 January 1999

1. Scope and application

(1) These terms are applicable to agreements between Wirtschaftsprüfer or Wirtschaftsprüfungsgesellschaften (hereafter uniformly referred to as "Wirtschaftsprüfer") and their clients concerning audits, advisory work and any other services, as far as these are not otherwise expressly agreed in writing or provided for by non-discretionary legal regulations.

(2) If, in exceptional cases, contractual relations also exist between the Wirtschaftsprüfer and parties other than the client, the provisions of Section 9 below also apply to the relations with such parties.

2. Scope and execution of assignment

(1) The object of the Wirtschaftsprüfer's assignment is the performance of agreed services and not the achievement of a particular economic result. The assignment is executed in accordance with generally accepted professional standards. The Wirtschaftsprüfer is entitled to use qualified persons to carry out his assignment.

(2) The application of foreign law requires special written agreement, except in cases of special investigations.

(3) The assignment does not extend — unless expressly stated otherwise — to an examination of due adherence to tax laws or special regulations, e.g. to the law of price control, laws of limitation of competition and other controls; the same applies to determination as to whether grants, allowances or benefits of any other type may be claimed. The execution of an assignment includes only the application of auditing procedures aimed at the disclosure of bookkeeping frauds and other irregularities if during the performance of the audit such requirement becomes apparent, or if this has been expressly agreed in writing.

(4) If the legal position changes after the final professional pronouncement by the Wirtschaftsprüfer, he is not obliged to inform the client of the changes or any resulting consequences. This provision also applies to parts of the assignment which are already completed.

3. Information to be given by the client

(1) The client has to see that the Wirtschaftsprüfer even without his specific request is supplied in good time with all the documentary evidence necessary for the execution of the assignment and informed of all events and circumstances which may have a bearing on the execution of the assignment. This also applies to any evidence, events and circumstances which come to light during the course of the Wirtschaftsprüfer's work.

(2) Upon request of the Wirtschaftsprüfer, the client must confirm in a written statement formulated by the Wirtschaftsprüfer that the evidence, information and explanations supplied are complete.

4. Safeguard of independence

The client undertakes to ensure that no action is committed which might endanger the independence of the Wirtschaftsprüfer's staff. This applies especially to offers of employment and offers to perform professional work on the staff member's own account.

5. Reporting and oral information

If the Wirtschaftsprüfer is obligated to present the results of his work in writing, only that written presentation is authoritative and binding. In the case of audit assignments the report is, unless otherwise agreed, submitted in writing. Oral explanations and information given by the staff of the Wirtschaftsprüfer outside the scope of the assignment are never binding.

6. Protection of the Wirtschaftsprüfer's intellectual property

The client warrants that special opinions, organization plans, drafts, sketches, tabulations and calculations, particularly quantity and cost computations, prepared by the Wirtschaftsprüfer within the scope of the assignment, are only used for his own purposes.

7. Release of a Wirtschaftsprüfer's professional statement to third parties

(1) The release to third parties of professional statements made by the Wirtschaftsprüfer (reports, special opinions, etc.) requires the Wirtschaftsprüfer's written consent, unless the terms of the assignment allow release thereof to a designated person.

As to third parties, the Wirtschaftsprüfer is liable (within the limits of Section 9) only if the prerequisites of sentence 1 are satisfied.

(2) The use for advertising purposes of professional statements made by the Wirtschaftsprüfer is not permitted; any infringement entitles the Wirtschaftsprüfer to instant termination of all assignments not yet completed for the client.

8. Correction of deficiencies

(1) The client is entitled to have deficiencies in the Wirtschaftsprüfer's work corrected. Only if the correction fails may the client also claim a reduction of fees or cancellation of the contract. If the assignment has been awarded by a merchant within the scope of his commercial activities, by a public-law legal entity or by a public-law fund, the client can only claim cancellation of the contract if the Wirtschaftsprüfer's work, because of the failure in correcting the deficiency, is of no interest to the client.

Claims for additional compensation are dealt with under Section 9.

(2) The client must submit his claim for correction of deficiencies in writing without delay. Claims under paragraph (1) sentence 1 expire six months after completion of the Wirtschaftsprüfer's professional work.

(3) Obvious errors, such as typing and arithmetical errors and deficiencies of form contained in a Wirtschaftsprüfer's professional statements (report, special opinion, etc.) may be corrected by the Wirtschaftsprüfer at any time also with effect against third parties. Errors which are apt to question the results contained in the Wirtschaftsprüfer's professional statements, entitle the Wirtschaftsprüfer to withdraw such statements also with effect against any third party. In such cases the Wirtschaftsprüfer should, if practicable, first hear the client.

9. Liability

(1) With regard to audits required by law, the liability limitations set out in § 323 par. (2) Commercial Code apply.

(2) Liability in cases of negligence: Single cases of damages

Pursuant to § 54a par. (1) No. 2 Law regulating the Profession of Wirtschaftsprüfer (WPO) the liability of the Wirtschaftsprüfer for damages of any kind, whether it is joint or several liability, is limited in a single case of damages due to negligence to DM 8 million; this limitation also applies to liability to a person other than the client. A single case of damage is defined as the total sum of the damage claims of all persons entitled to claim, which arise from one and the same professional error (offence); a single case of damage is also defined as the total of all offences committed in performing an audit or other coherent service (a specifiable professional service which technically represents an indivisible performance) by one or more persons. However, in the case of damage suffered from several audits of the same kind or several coherent services of similar nature a Wirtschaftsprüfer can be held liable only up to an amount of DM 10 million irrespective of whether the damage were caused by offences within one year or within several consecutive years. The limitation of DM 10 million does not apply in cases of audits required by law.

(3) Limitation periods

A damages claim may only be lodged within twelve months of the claimant becoming aware of the damage and of the event constituting the claim, at the very latest, however, within 5 years following the event constituting the claim. The claim expires unless legal action is taken within six months following the written refusal of acceptance of the correction and the client was informed of this consequence. The right to apply the statute of limitations is not prejudiced. This paragraph (3) applies equally to audits required by law with legally imposed liability limitations.

10. Supplementary provisions relating to audits

(1) A subsequent amendment or abridgement of the audited and certified financial statements or management report requires the written consent of the Wirtschaftsprüfer even if these documents are not published. In cases where the Wirtschaftsprüfer has not

issued an audit opinion, reference to the Wirtschaftsprüfer's examination may only be made in the management report or other publications with his written consent and then only with a wording authorized by him.

(2) If the Wirtschaftsprüfer revokes his opinion, it must no longer be used. If the client has already made use of the opinion, he must announce its revocation upon the request of the Wirtschaftsprüfer.

(3) The client is entitled to 5 copies of the report. Additional copies are charged for separately.

11. Supplementary provisions relating to tax advisory services

(1) When advising the client on a particular tax problem or when furnishing continuous tax advice, the Wirtschaftsprüfer is entitled to assume that the facts, especially figures, provided by the client are complete and correct; this also applies to bookkeeping assignments. He is, however, obliged to inform the client of any errors discovered by him.

(2) The assignment for tax advisory services does not comprise those services required for meeting deadlines, except in cases where the Wirtschaftsprüfer has specifically accepted such assignment. In such cases the client must supply the Wirtschaftsprüfer with all documents essential for meeting deadlines, especially with tax assessment, with sufficient time for the Wirtschaftsprüfer to give them adequate attention.

(3) In the absence of other written agreements, a continuous tax advice assignment covers the following work arising during the period of the agreement:

a) preparation of the annual income, corporation and trade tax returns as well as property tax returns on the basis of financial statements and other records and evidence required for tax purposes, to be submitted by the client

b) review of assessments concerning the taxes mentioned in (a)

c) negotiations with the tax authorities with regard to the returns and assessments mentioned in (a) and (b)

d) participation in tax audits and evaluation of the results of tax audits concerning the taxes mentioned in (a)

e) participation in appeals and complaints filed with the Fiscal Authorities ("Einspruchsverfahren" and "Beschwerdefahren"), concerning the taxes mentioned in (a).

When undertaking the aforementioned work the Wirtschaftsprüfer takes into account major published legal decisions and the administration's opinion.

(4) In cases where the Wirtschaftsprüfer receives a retainer fee for continuous advice, the work mentioned in paragraph 3 (d) and (e) is chargeable separately unless otherwise agreed in writing.

(5) A special agreement is required to engage the Wirtschaftsprüfer's services on particular individual problems with regard to income, corporation and trade tax, the valuation procedures for property taxation, property tax, as well as all problems concerning turnover tax, wages tax and any other taxes and dues. This also applies to:

a) the treatment of non-recurring tax matters, e.g. in the field of estate tax, capital transactions tax, real estate acquisition tax

b) participation and representation in proceedings before tax and administrative courts and in criminal proceedings concerning taxes, and

c) granting of advice and expert opinions in connection with conversions, mergers, capital increases and reductions, financial reorganizations, admission and retirement of partners or shareholders, sale of businesses, liquidations and similar matters.

(6) If, in addition to the above, the Wirtschaftsprüfer is requested to prepare the annual turnover tax return, he is not obliged to examine adherence to special accounting requirements, if any, or to determine whether the client has taken full advantage of all benefits offered under the turnover tax law. No guarantee is assumed for the completeness of the evidence compiled in substantiation of the credit against the client's turnover tax liability for his suppliers' turnover tax charge.

12. Professional discretion towards third parties and data protection

(1) The Wirtschaftsprüfer is, as provided by law, obliged to treat all matters which come to his knowledge in connection with his engagement as

confidential, irrespective of whether these matters concern the client himself or his business connections, unless the client releases him from this obligation.

(2) The Wirtschaftsprüfer is not allowed to release reports, special opinions and other written statements on the results of his work to third parties without the consent of his client.

(3) The Wirtschaftsprüfer is entitled — within the framework of his assignment — to process personal data made available to him or to authorize third parties to process them.

13. Default of acceptance and lack of cooperation on the part of the client

If the client is in default of accepting the services offered by the Wirtschaftsprüfer or if the client refrains from the cooperation incumbent on him in accordance with Section 3 or otherwise, the Wirtschaftsprüfer is entitled to terminate the agreement without notice. The right of the Wirtschaftsprüfer to compensation of additional expenses as well as damages caused by default or by the client's failure to cooperate is not prejudiced, even if the Wirtschaftsprüfer does not exercise his right to terminate the agreement.

14. Remuneration

(1) In addition to his fees or remuneration, the Wirtschaftsprüfer is entitled to reimbursement of his expenses; the value added tax is billed separately. He may request appropriate advances on account of remuneration and expenses and may withhold the results of his services until full payment of his claims has been made. If there is more than one client, they are jointly and severally liable.

(2) Any set-off against claims of the Wirtschaftsprüfer for remuneration and reimbursement of expenses is only permitted in the case of undisputed or legally settled claims.

15. Storage and return of documentation

(1) The Wirtschaftsprüfer shall retain, for a period of seven years, the documents handed over to him or prepared by himself in connection with the performance of the assignment as well as the correspondence concerning the assignment.

(2) After settlement of his claims arising from the assignment, the Wirtschaftsprüfer, on request of the client, has to return all documents obtained from the client or from a third party on his behalf by reason of his assignment. This does not, however, apply to correspondence exchanged between the Wirtschaftsprüfer and his client and to any documents of which the client already has the original or a copy. The Wirtschaftsprüfer is entitled to prepare and retain copies or photocopies of any documents which he returns to the client.

16. Applicable law

The assignment of the Wirtschaftsprüfer, the execution of the assignment and the resulting claims are solely governed by German law.

Special conditions

Special conditions for the increase of the maximum liability limits under the "General Conditions of Assignment" as of 1 January 1999.

The limitations of DM 8 million as provided for in No. 9 para. 2 of the "General Conditions of Assignment" of the Institute of Accountants (Institut der Wirtschaftsprüfer e.V.) as of 1 January 1999 are substituted by the amount of DM 10 million.

Further, the following shall apply with respect to the increased liability sum:

If, in the engaging party's opinion, the foreseeable engagement risk will be considerably greater than DM 10 million, ARTHUR ANDERSEN Wirtschaftsprüfungsgesellschaft Steuerberatungsgesellschaft mbH (ARTHUR ANDERSEN) is obligated, as engaged party, at the request of the engaging party to offer to that party the option of an increased liability limit if and to the extent that liability insurance for the increased amount can be obtained from a German professional liability insurer. Upon the agreement of an increased liability limit ARTHUR ANDERSEN is entitled to charge for the insurance premium as part of its fees or as expense.

The above-mentioned provisions are not applicable when either a greater or lesser liability limit has been defined by law for the respective professional service, namely in connection with statutory audits.

If various causes of a sustained damage concur, ARTHUR ANDERSEN is liable within the scope of the increased liability limit only to the extent that causation can be attributed to ARTHUR ANDERSEN or its employees in relation to causation by others: This especially applies in the case of a joint engagement with other auditors.